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Boeger, Nina and Corkin, Joseph (2017) Institutional path-dependencies in Europe's networked modes of governance. JCMS: Journal of Common Market Studies, 55 (5) . pp. 974-992. ISSN 0021-9886 [Article] (doi:10.1111/jcms.12546)

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# Institutional Path-dependencies in Europe's Networked Modes of Governance<sup>1</sup>

Nina Boeger and Joseph Corkin

*We consider whether transnational networks that softly discipline member states (e.g. the OMC or regulatory networks that oversee national discretion in implementing broad EU frameworks) mark a significant turn in European integration or merely a transitional step towards centralisation (e.g. agencification) and formalisation (subjecting to law). We suggest this requires a closer reading of the institutional changes necessary to bring about centralisation/formalisation, and ask particularly whether change might be partially attributable to the very institutional-agents operating inside Europe's networked modes of governance. Supplementing functional-political explanations, we propose an endogenous model of institutional change that incorporates the independent role transnational networks play in shaping their own institutionalisation, which may make this mode of governance more resilient and even self-reinforcing. We test the plausibility of this model with a case study detailing the institutional entrepreneurship of transnational networks in the telecoms sector.*

## Introduction

Journals that were once full of articles analysing the process of European integration are now full of articles analysing the EU as a system of governance. We consider it necessary to combine the two, on

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<sup>1</sup> We are grateful to the Arts and Humanities Research Council for funding the research for this article.

the basis that understanding how Europe now integrates requires that we understand the EU as a system of governance because the layer of institutions that make up this system (EU agencies, transnational networks, intergovernmental committees, working groups etc.) are perfectly capable of influencing their own institutionalisation and consequently the direction that integration takes. Related to this is the idea that we can no longer read integration simply as a process of centralisation (supranationalism) and formalisation (subjecting to law) without neglecting that it happens increasingly through transnational networks that only softly discipline member states using mechanisms such as peer-review, -monitoring and -evaluation, the exchange of best practice and benchmarking (Coen and Thatcher, 2008; Eberlein and Newman, 2008; Sabel and Zeitlin, 2010; Blauberger and Rittberger, 2015). Some suggest these decentralised and deformed modes of integration are usually transitional steps towards more advanced modes; a temporary deviation, whose networked architectures and softer disciplining will eventually centralise and harden, disappearing or being captured by EU agencies and other hierarchies (Levi-Faur, 2011). But this may fundamentally misread the integration process and the ever-increasing variety and hybridizations of its modes of governance (Boin et al., 2014). Even when agencification and formalisation occur, the transnational networks and soft disciplining that commonly preceded it can show remarkable resilience, continuing to operate alongside the new EU agencies and regulatory frameworks.

We suggest that to explore whether this mode of governance represents a profound shift in the trajectory of European integration, or is no more than a passing phase, requires a deeper understanding of what determines its choice than orthodox functionalist-political accounts of institutional change provide. These accounts are exogenous, attributing institutional change to bargains struck between governments and the principal EU institutions, to establish particular institutional-agents to deal with particular functional (largely coordination) needs. We consider it necessary to supplement them with an

endogenous layer that takes seriously the idea that institutional change is at least partially attributable to the institutional-agents chosen to fulfil these functional needs; that an EU administrative order whose contours are far from settled (Trondal, 2010) is being shaped, at least in part, from within, by the very networks that operate inside this order. This article presents a case study of institutional change in the telecoms sector, aimed at testing the plausibility of this idea.

## The phenomenon and existing explanations

Despite a long-run tendency in the EU towards centralisation and formalisation, and even when a sector acquires an EU agency closely tied to the Commission that is simultaneously handed hard legal powers, existing transnational networks and their soft disciplining tend to survive in one form or another as part of the new architecture (Egeberg et al., 2012; Boin et al., 2014; Blauberger and Rittberger, 2015). From regulatory networks to the Open Method of Coordination (OMC), transnational networks that (only) softly discipline member states operate in fields as diverse as utilities regulation, environmental protection, transport safety, pensions, competition law, migration, organized crime, financial markets and drug control. They can be legally independent of the EU, ‘agencified’, or even disguised as ‘networked agencies’ (Levi-Faur, 2011), but what they have in common is that they facilitate the coordination of national policymaking and/or the national implementation of EU regulatory frameworks, without imposing full institutional or legal centralisation.

Rather than build up a typology – gradations between decentralised networks and centralised agencies – we suggest it is preferable to focus on two characteristics that we deem essential to the phenomenon overall: (1) the existence of some sort of transnational network bringing together national policymaking units, whether or not alongside an EU agency, and (2) that this network, at least in part, only softly

disciplines its members (those units) whether or not this is accompanied by hard law. This allows us to overcome the problem of networks disguised as EU agencies, which in fact rarely appropriate powers from the member states – exercising only that which had already been transferred to the EU – and tend only to do so using softer modes of disciplining. These include lead EU agencies that organise cooperation among national agencies and that resemble “peak organizations” in transnational networks rather than truly free-standing bodies (Boin et al., 2014).

The evolution of transnational networks, EU agencies and all the hybrids that lie in between is commonly explained using a functionalist-political account that understands them to be designed exogenously, in negotiations between governments and the principal EU institutions (Dehousse, 1997; Héritier, 2007; Diedrichs et al, 2011). Member states that are reluctant to compromise their sovereignty, but under functional pressure to coordinate, accept to do so through transnational networks and their softer disciplining because this allows for coordination without requiring full integration (Sabel and Zeitlin, 2010; Kelemen and Tarrant, 2011; Blauburger and Rittberger, 2015). It is a means to resolve the ‘perennial tension’ between their ‘problem-solving impulse to use the EU level efficiently, effectively and legitimately for national objectives’ and their ‘sovereignty reflex’ to resist transferring power (Diedrichs et al., 2011, p.22). Meanwhile, the principal EU institutions, despite a preference for instruments of control premised on the centralized exercise of hierarchical (formalised) power, are content to “upload” sectors to the EU, via networks that discipline only softly, on the basis that governments will eventually acquiesce to more centralised/formalised solutions (Héritier, 2007).

We commend a model of institutional change that takes a more institutionalist approach (Pierson, 2004; Egeberg et al., 2012) so as to offer something more fine-grained that supplements, without replacing, these functionalist-political accounts. In departing from their parsimony, we seek to avoid going too far

in the other direction of attributing everything to contingent events, or to the specificities of a particular sector; the aim being to enrich the orthodox model, by adding essential nuance, without extinguishing its conceptual clarity. In doing so we do not downplay the role of governments and the principal EU institutions in shaping the EU's administrative order, but only suggest that models of European integration and institutional change *must* now incorporate the *independent* role that transnational networks and their members play in their own institutionalisation. Just as purely functionalist accounts would lack a political layer to capture the interplay between governments and the principal EU institutions, as they negotiate around the implications of those functional pressures, we suggest an additional institutionalist layer is necessary to capture influence that stems from within the transnational networks that are the subject matter of those negotiations and whose institutional power is at stake in them.

## The model explained

There is nothing new in studying the evolution of Europe's networks and agencies from a variety of perspectives: functionalist, political, or institutionalist (Thatcher and Coen, 2008; Sabel and Zeitlin, 2010; Trondal, 2010; Kelemen and Tarrant, 2011; Busuioc, 2013; Blauburger and Rittberger, 2015). What is new is to put forward these perspectives as layers of a unified model of institutional change, each necessary to understand a significant (transnationally networked, soft disciplining) turn in European integration. Functional needs may drive coordination efforts, but the transnationally-networked, soft-disciplining form that these efforts take necessitates consideration of other factors; a more refined model that takes into account not only the influence of governments and the principal EU institutions, bargaining in the shadow of functional needs, but also endogenous factors that stem from within the networks themselves.

Fundamentally, institutionalist approaches recognise that institutions are 'extracted from and mediated by the pre-established [institutional] framework' in a sort of 'bricolage' (Martens, 2012); neither developed from a 'blank slate' (Pierson, 2004) nor simply 'popping up' to fulfil certain functional needs (Egeberg et al., 2012). New institutions are instead created out of and mediated by pre-existing institutions, so that those established in one phase become influential in pressing for, or resisting, change in subsequent phases (Thatcher and Coen, 2008). This explains their 'stickiness' (Pierson, 2004) and how change is likely to happen incrementally and gradually (Adler and Haas, 1992; Mahoney and Thelen, 2010), 'layered around already existing orders' (Curtin and Egeberg, 2008, p.640). While a number of studies have applied these ideas to the ways in which existing transnational networks provide the foundations upon which EU agencies are built (Zito, 2009; Busuioc, 2013), their focus is not usually on how this distinct mode of governance endures into the new architecture, as an institutional legacy.

The dynamic, however, begins long before the EU and its member states consider governing a sector in this way (Schot and Schipper, 2011). Even before the EU existed, states were 'disaggregating' into functionally differentiated sub-state units to cope with various capacity deficits; units that were themselves cooperating directly with their counterparts in other states to bring about their own transnational order (Keohane, 1997; Slaughter, 2004). It is this transnational order that the EU is busy formalising when it endorses particular transnational networks and incorporates them into its own administrative order. We should not then assume this is determined exclusively from outside these networks, which were not simply willed into being by governments and the principal EU institutions to perform particular tasks using a particular mode of soft disciplining. Instead, these actors were already members of pre-existing, often non-formalised networks, capable of influencing their own (partial) formalisation as officially recognised transnational networks, as well as subsequent rounds of

institutional change that affect them. Moreover, formalisation as an EU-endorsed network usually creates a feedback loop by increasing the density of interactions among its members, strengthening the cohesiveness of their community and thus the platform from which it can influence future institutional change (Egeberg and Trondal, 2009).

These networks and their members are rarely formally empowered to shape their own institutionalisation, so their influence is necessarily entrepreneurial, acting through the preference formation of governments and the principal EU institutions, which are so empowered (Eberlein and Newman, 2008; Egeberg and Trondal, 2009). Their influence stems from governments' reliance on the expertise of their members, the Commission's need to use these networks to justify its own institutional proposals and European Parliament's preference to work with them as more stable partners than national governments. They might then use that influence to persuade governments and/or the principal EU institutions to adopt views that align with their own preferences and/or gradually to shape institutional dynamics in the periods between formal reviews of their network, during which existing frameworks are applied and evaluated, or simply by effecting informal change to their practices, which then alters the network by stealth.

By cooperating to defend the core tenets of their distinct (transnationally networked, soft disciplining) mode of governance, networks and their members may slow or prevent agencification and encourage hybrids that blur boundaries between decentralized transnational networks and centralised supranational agencies (Thatcher, 2011; Thatcher and Coen, 2008; Schot and Schipper, 2011; Eberhard and Newman, 2008). So, even if a network cannot avert its agencification, it may still shape the resulting architecture, contributing to a more decentralised, less formalised design than might otherwise have



been the case. This establishes a self-reinforcing dynamic in which network members appear as agents of, and advocates for, a distinct mode of governance that relies heavily on soft disciplining.

## Factors contributing to institutional influence

In the sectors in which they operate, transnational networks accumulate considerable expertise in overseeing the implementation of EU regulatory frameworks or national policymaking, alongside a political profile and growing external recognition (Trondal, 2010). As a result, while members of a transnational network necessarily pay attention to the steering signals of their political principals, their network also imposes its own 'logic of portfolio' and bestows some autonomy upon them vis-à-vis their political principals (Egeberg and Trondal, 2009). It opens up a transnational, technocratic space into which national political principals struggle to reach, but without locking members into a supranational hierarchy that would only leave them beholden to a new set of supranational political principals. Industry addresses itself directly to them, and governments and the principal EU institutions are increasingly reliant upon them to articulate complex policy problems and to develop solutions to them. It is plausible then that those solutions might sometimes spill over into the institutional; that transnational networks and their members have perhaps become bolder in offering advice on issues that pertain to their own governance structures. Stakeholders that come together in broader policy networks or advocacy coalitions may share some of the characteristics of these transnational networks, and sometimes even show an interest in institutional change (Eikeland, 2011), but they lack the insider status and accompanying institutional authority that is potentially necessary to a specifically institutional entrepreneurship.

What makes (some) transnational networks and their members effective institutional entrepreneurs, capable of opposing centralisation/formalisation and reinforcing their distinct mode of governance, and under what conditions? This is not about the well-documented influence that transnational networks and their members enjoy over EU policymaking, but rather about its extension to institution-making. But the success of that entrepreneurialism is likely to turn on similar, mutually dependent factors, including their internal organisation and accumulation of relevant *resources*. These comprise the tangibles of funding, staffing and infrastructure but also the intangibles of technocratic expertise, ability to frame complexity, insider knowledge and informational advantages over political principals, and institutional authority and status (Thatcher, 2011). A distinct resource is their transnational community itself, its cross-border reach and degree of internal consensus, bestowing on them the ability to coordinate strategically with counterparts in other states, through the network or outside it (Raustiala, 2002; Slaughter, 2004). Coordinating in this way will enable them, amongst other things, to determine their collective institutional preferences and potentially even, collectively, to out-manoeuvre their government leads. We consider these *selection* processes important. Members of a transnational network will be collectively more persuasive if they can establish a reasonably stable consensus on a preferred institutional model, selected in a way that avoids internal splits that might emerge were discussion to deteriorate into ‘bickering interest groups’ or fail to secure the participation and commitment of all members (Adler and Haas, 1992, p. 384). A common position also serves as a useful reference point to rally around when managing potential confrontations with political principals. Timing is significant. The sooner they can agree, the more likely they can frame the agenda before negotiation lines settle. Their entrepreneurship is also likely to be more successful if they complement this common position with an effective *mobilisation* strategy. By putting in place suitable internal infrastructure (e.g. a designated committee), they will ensure their collective voice is sustained. It provides a forum to resolve

internal discord if and when it arises, that might otherwise weaken their strategic position, and ensures that position is effectively disseminated, nudging political principals towards their way of thinking.

Members may then work individually, or collectively as a network, to exploit their privileged channels of access through to particular governments or EU institutions, deploying their entrepreneurship through mechanisms of agenda-framing and the control of ideas or, more directly, through advocacy and brokering. These three processes are interrelated – each aimed at convincing diverse political coalitions of the value of particular institutions – even if they refer to conceptually distinct mechanisms. *Agenda-framing* occurs when a network that already coordinates a particular policy domain gets to frame the outcome of institutional change within that domain by using its expertise and leveraging its delegated domestic authority to rally support (Eberlein and Newman, 2008, p.36). In supplying ‘impartial’ technical advice to the principal EU institutions, usually through formal channels, it can subtly re-cast their negotiations in its chosen terms by defining the nature of and interpreting the relevant problems for them, to limit ‘the choice of ... appropriate institutions within which to resolve or manage’ those problems and thus to narrow the range of options they consider politically and/or technically feasible (Adler and Haas, 1992, pp.375-8). *Advocacy* is more overt: members of the network, acting singly or jointly, address governments or the principal EU institutions directly and usually less formally, in an effort to persuade them of the benefits of a preferred institutional solution and to eliminate support for alternatives. Here the lobbying is more directed, and typically relies on their role as technocratic insiders and primary advisers to national political principals. Finally, *brokering* is a type of advocacy targeted at specific impasses or conflicts in the negotiations, aimed at ensuring they are resolved in line with the institutional preferences of the network and its members. Members step in, individually or in concert, to resolve bottlenecks and conflicts, with a view to attaining a compromise that reflects their preferences.

Who transnational networks and their members manage to draw into their coalitions depends on the attitudes of others towards their technocratic expertise and how closely their institutional preferences align with those of their potential partners. Parent ministries would seem most naturally inclined to rely on national members, while the principal EU institutions may have a strategic interest in using existing transnational networks to legitimize, and to grow support for, their own institutional proposals. They might consider them more stable partners, with a lower personnel turnover and more consistent technocratic insight, than national ministries or permanent representations (Hooghe, 2012).

The institutional entrepreneurship of transnational networks is an ongoing process that is not confined to periods of negotiation over formal institutional change, but occurs also between these periods when, despite a stable institutional framework, other factors intervene (changing political circumstances and agendas, new evidence of institutional inefficiencies etc.). *Consolidation* is about building institutional resilience in these periods; gradually shifting discussions, attitudes, roles and interests, as well as demonstrating the network's effectiveness in preparation for the next review. Given the ever present threat of centralisation and formalisation, ongoing mobilisation of support is significant (Martens, 2012) so that, once established, a transnational network will seek continually to convince those with the power to change it that its distinct mode of governance remains effective. It will optimize its working practices and publicise its regulatory successes, whether through official channels or more diffusely through the media, industry and other outlets.

## Methodological considerations

We detail below how the factors we have identified as potentially significant to the success of institutional entrepreneurship played out in negotiations over reform to the institutional architecture

for regulating telecoms in the EU. The purpose of our study is to test the plausibility of the idea that in modelling EU integration, functional-political accounts may have to be supplemented by an endogenous perspective, highlighting institutional path-dependencies that stem from the institution-agents within Europe's networked modes of governance. The case study is chosen on the basis that the principal institutional choices at stake in the negotiations fell either side of the mode of governance whose (trans)formation we seek to understand: we consider the influence of the two existing transnational networks – the Independent Regulators Group (IRG) and the European Regulators Group (ERG) – in the negotiations that led to the ERG's partial formalisation as the Body of European Regulators for Electronic Communications (BEREC) and the retention of the IRG. Expressed in binary terms, the negotiations pitched integration-by-coordination (the soft disciplining of national discretion by transnational network) against integration-by-law (the harder disciplining of more harmonized law by a more supranational institutional architecture).

The negotiations were more wide-ranging, but we focus on: (1) the composition of the new EU regulator, which came down to a choice between reforming an existing transnational network or establishing a new EU agency; and (2) the extent of the Commission's powers over regulatory remedies designed by national regulatory authorities (hereinafter NRAs) to counter competition problems on their telecoms markets, which came down to whether the Commission should be able to veto and/or harmonise those remedies or whether it was enough that the NRAs were subject to the soft disciplining of their network. These two issues align with the phenomena of, respectively, centralisation and formalisation (or more precisely endogenous blockages thereto) that we seek to understand.

Our approach is actor-centred and institutionalist, relying on detailed process-tracing to expose both formal and informal dynamics in the negotiations (King et al., 1994; Olsen, 2002; George and Bennett,

2004). We consider that studies that focus overly on the moment of delegation – when governments and the principal EU institutions agree on what to delegate to an institutional-agent and how to control it – risk overlooking how its autonomy develops over time and is carved out by the institution itself. Future studies will be necessary, however, to compare processes of institutional change across multiple sectors, to explain why centralisation and formalisation proceed further in some and not others. These will certainly be necessary to demonstrate causality robustly, but they are logically preceded by in-depth studies like this one, and others like it (Schout, 2008; Pierre and Peters, 2009) that trace processes of change within individual sectors to reveal the wealth of possible mechanisms of path-dependence at play. These will then inform the choice of appropriate comparators, to ensure we design comparative studies by selecting on suitable variables.

To enable detailed process-tracing, we collected evidence from those involved in-and-around these negotiations using 44 semi-structured interviews (Table 1, Appendix), alongside a survey of the documentary record. Extensive reliance on interviews is necessary because the documentary record does not usually reveal the informal dynamics of the negotiations, and especially the internal positioning of NRAs. Decision-making amongst NRAs within their network is rarely publicly recorded or minuted. Given our focus on the institutional role of the existing transnational networks, we over-selected NRAs as our primary research target, but compared their responses to other groups and within their group, to avoid bias. The weighting towards NRAs is justified because the purpose of the case study is not to demonstrate causality, or indeed that functional and political “causes” were less significant, but only to consider whether we may need to add an endogenous layer to exogenous functionalist-political accounts so as to model (de)centralising and (de)formalizing modes of integration/governance more accurately. The case study serves only to test the plausibility of such a model. While all the material presented has been tested through corroboration and triangulation, we describe events and positions

taken, in as far as possible, using direct quotes from interviews (without revealing identities, as all interviewees were granted anonymity) thereby re-telling the story in the protagonists' own words.

## Tracing the genesis of *BEREC*

BEREC, formally set up in 2009, was an institutional compromise that saw some limited centralisation/formalisation, but largely stuck with the transnationally networked, soft disciplining toolkit of its predecessor, to leave the architecture at the more decentralised/deformalised end of the institutional spectrum compared to other sectors. The IRG had been established in 1997 by the NRAs themselves, and the ERG formalised in 2002 by Commission decision.<sup>2</sup> The successor BEREC, on the other hand, is an agencified network established by EU regulation<sup>3</sup> and is lent the operational and administrative support of a small new EU agency, the BEREC Office, without itself being an EU institution. That regulation also determines its legal responsibilities (e.g. to assist individual NRAs, advise EU institutions, deliver opinions on Commission draft decisions, recommendations and guidelines, and generally to develop and disseminate best regulatory practice), without fixing all the procedures for doing so.

BEREC's disciplining is also a little harder than that of its predecessor, even if it remains fundamentally soft. Its oversight of the NRA's implementation of the new Regulatory Framework for Electronic Communications (hereinafter the 'Regulatory Framework') is supervised by a Board of Regulators that comprises the heads of the NRAs themselves. They take all decisions relating to the performance of

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<sup>2</sup> Commission Decision 2002/627/EC amended by 2004/641/EC.

<sup>3</sup> Regulation (EC) No 1211/2009.

BEREC's functions, on a two thirds majority basis. Crucially, the Commission can attend the Board but cannot vote, while the IRG, with which BEREC shares a near-identical membership (minus the Commission), enables the NRAs to discuss responses to public consultations, or requests for advice, in the Commission's absence, before responding formally as BEREC. Finally, the Commission can review, but cannot veto, a national regulatory remedy and the NRAs must take 'utmost account' of its recommendations, as well as of BEREC's opinions (as must the Commission), but the NRA need follow neither provided it gives a reasoned justification for adopting a contrary remedy.<sup>4</sup>

Superficially, the negotiations and their outcome followed a familiar pattern: a classic turf-war of the type predicted by functionalist-political accounts that emphasise the functional pressures that drive coordination and how they are exploited by the principal EU institutions, to push centralisation and formalisation, while checked by the sovereignty reflex of governments that are reluctant to cede power. The Commission tried to persuade Parliament of the functional benefits of centralisation/formalisation, and more specifically of the importance of granting it a veto over the design of national regulatory remedies, the exercise of which it suggested that it should be advised upon by a powerful new EU agency. Meanwhile, the governments were concerned to guard their sovereignty and were reluctant to establish such an agency, or to harden the Commission's powers over national implementation (Kelemen and Tarrant, 2011; Saz-Carranza and Longo, 2012; Blauburger and Rittberger, 2015). At the same time, the existing networks and their NRA members, acting individually or in *ad hoc* coalitions, coordinated by their networks or at their own initiative, also emerged as particularly active and influential advisors to (and lobbyists of) both the governments and the principal EU institutions.

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<sup>4</sup> Article 7a(7), Directive 2009/140/EC.



## Resources

During an earlier review of the Regulatory Framework, completed in 2002 when the ERG was set up, NRAs had remained largely the passive objects of proposed institutional reforms. But since then they had gained considerable expertise in implementing the Regulatory Framework, much of it repositied in their network. They had become increasingly autonomous of their political principals in national ministries, due not only to the standard range of principal-agent issues (time constraints, differing time horizons, informational asymmetries, unintended consequences and so on) but also the sheer complexity of regulating a sector undergoing rapid technological change (Coen and Thatcher, 2008). Some NRAs, including the British regulator Ofcom, Germany's BNetzA, the French ARCEP or OPTA in the Netherlands, had grown into high profile and well-resourced independent institutions, and were able to invest resources to support the coordination, and continuation, of their transnational network.

Moreover, as the sector became increasingly international, in part accelerated by EU interventions, the NRAs found themselves interacting ever more intensely with their counterparts in other Member States, such that their power grew collectively and in parallel with (and to some extent in competition with) that of the Commission. The technical challenge of regulating Europe's telecoms markets produced a tightly-knit epistemic community of lawyers, economists and engineers accustomed to interacting openly with one another across borders (Saz-Carranza and Longo, 2012), whose interactions reached back to the 1980s when a Senior Official Group for Telecommunications was established in Europe (Boeger and Corkin, 2013, pp.307-314). Though national concerns may dominate the agenda of individual NRAs, their officials were certainly inclined to turn to the network for support or, as one NRA official put it: 'the collective know-how at the European level helps us enormously when we justify our regulatory decision-making.' Various Council and ministry officials referred to the IRG/ERG network

respectively as a 'club', a 'large corporation' and a 'personal network'. Some NRA officials went further, ascribing to their network an 'identity', 'deep cohesion', 'informal relationships', 'spirit', 'trust' or 'psychological part'.

Establishing a position of strength brought with it, according to one industry representative, a 'sea change in their attitudes' towards their own institutional role, especially amongst the larger and well-resourced NRAs, which meant that during the 2005-9 framework review process, they heavily involved themselves as 'key political figures' in the negotiations (Saz-Carranza and Longo, 2012, p.29). A ministry official described it as the NRAs' 'emancipation movement', directed against a control-seeking Commission, where they sought to influence governments and the principal EU institutions and to broker an institutional compromise that aligned with their institutional preferences.

## Selection

Shortly after framework review consultations were initiated in 2005, considerable debate within ERG/IRG began over how it should position itself on the institutional issues. NRAs 'entered the discussions... based on their own experiences' (NRA official) and certainly did not agree on everything. Some NRAs followed their government lead closely, others took a more independent view. Some, including the Italian regulator AGCOM, were not in principle opposed to an EU agency, whereas other NRA initiatives leaned heavily towards the soft disciplining networked model, including one modelled in part on the EU's private standardisation bodies and founded on the existing IRG infrastructure. But NRAs also recognized that a failure to convey a unitary message in their external communications would diminish their collective influence, so united, early on, around a short internal document - a 'famous one-pager, consisting of two pages' (NRA official) – in which they rejected the Commission's initial proposals for more institutional centralisation. They argued that coordination via an enhanced network

would be a more effectual mode of integration than a centralized regulatory model, primarily on the ground that it made optimal use of their own regulatory expertise of domestic markets (ERG, 2006; ERG, 2007; ERG, 2008). Instead of a centralised EU agency, they proposed to retain ERG's independence but to embed its competences in the EU framework, making it institutionally less 'vulnerable' (NRA official), while placing both NRAs and the Commission under a legal obligation to take 'utmost account' of its positions. NRAs also made the case for setting up a separate, modestly-sized secretariat to provide the necessary logistical and administrative support to the network; though not nearly as large as the EU agency suggested by the Commission and certainly without substantive regulatory powers. In place of the proposed Commission veto over regulatory remedies, they declared themselves willing to accept only a 'pause for reflection', during which the Commission might require NRAs to seek the opinion of the transnational network on their draft remedies if it was concerned about their compatibility with the internal market. These proposals resonated with the official positions of some member states in early Council discussions (Council, 2007), while others (including Denmark, Sweden and to some extent the UK and Holland) were open to some centralisation. Even where the views of individual NRAs were broadly aligned with those of their government leads, their motivations sometimes differed subtly. Whereas political representatives focused primarily on safeguarding national sovereign powers - several of them emphasised the fact that, politically, they simply 'did not want any more EU agencies' (put in those terms by two ministry officials independently) - NRAs were more directly concerned about losing their institutional influence. They entered the negotiations as a 'defence mechanism' (ministry official), but also committed to ensuring that their regulatory expertise, as 'the ones closest to national markets' (Commission official), would be put to use in the integration process, preserving their network's 'standard way of doing things' (NRA official).

## Mobilisation

The ERG set up an internal ‘framework review project team’ that remained in place throughout, to monitor the negotiations, to draft suggested responses and to discuss potential amendments. NRAs would internally discuss these ‘high-level messages from the ERG’ (NRA official) before taking individual action. They also showed self-restraint in tempering their own individual lobbying whenever their position diverged from that of the network as a whole. One NRA official also told us that these ERG-endorsed positions served as a useful reference point for individual NRAs to ‘hide behind the other 26 member states’ and to manage potential conflicts with their own government leads. All NRA officials we interviewed stressed the importance of personal connections, and the ‘informal relationship’ (NRA official), within the ERG/IRG during the negotiations proved an effective channel of communication where issues could be discussed and internal disagreement resolved, to ensure NRAs worked ‘as a group’ (ministry official). While this made it ‘very obvious where NRAs stood’ (Commission official), it also created a sense amongst some of their government leads, whose interactions were described as ‘looser’ (ministry official), that the network’s behind-the-scene mobilisation, orchestrated through their project team, lacked external transparency, enabling them to ‘play games’ (government representative on the Council working party).

## Framing

In making its ‘creative ideas’ (European Parliament official) explicit at an early stage (ERG, 2007), the ERG managed not only to formulate a viable alternative institutional agenda to that of the Commission, but also to establish its role as agenda-setter and ‘individual player in the discussions’ (ministry official). As one NRA official put it: ‘it probably predisposed people listening to us to expand on those principles’. The ERG rigorously pursued these channels of influence. It was careful to maintain its advisory relationship to the Commission, through meetings and ‘a network of contacts’ (Commission official) with

the Director-General and its staff. The Commission in turn engaged the ERG strategically. It had ‘an interest in the NRAs writing the BEREC statute themselves’ (Commission official), to exploit their know-how as an ‘expert body’ (ministry official), to secure their commitment to the new architecture and to use its links to the NRAs to circumvent, if necessary, their parent ministries. Three ministry officials described (in the words of one) ‘a tendency within the Commission... to sidestep the ministries and gain greater influence at the regulator level.’

The ERG also made its collective expertise available to Parliament. Although it was not formally empowered to advise Parliament, its chair appeared before MEPs on a number of occasions to set out what the NRAs saw as a coherent institutional outcome (ERG, 2008). Beyond these public encounters, the ERG ‘brought out press communications or sought contact with the rapporteurs directly to discuss concrete proposals for amendments’ (NRA official), and rapporteurs repeatedly met with a group of NRA representatives ‘who were on the board of ERG’ (MEP). In fact, many of Parliament’s counter-proposals mirrored ERG suggestions (European Parliament, 2008, pp.89-90). These similarities were not coincidental, according to one MEP: ‘Clearly we needed [ERG’s] experience to know what was going to be workable.’ According to a Parliament official, rapporteurs regarded the ERG’s technical expertise as ‘trustworthy’ but also thought, strategically, that the institutional outcome would be more effective if the NRAs ‘own the results of what they are doing and feel committed to [the institution]’ (MEP).

The ERG’s contact with Council was more sporadic, but nonetheless significant. It approached the permanent representations of individual member states ‘to provide a common view by the regulators’ (NRA official), and the ERG chair even gave its opinion to the Council Presidency (according to one government representative, ‘we had meetings ... we consulted them’), which proved particularly significant at the sharp end of the negotiations in 2009. Moreover, by seconding NRA officials to their

parent ministries to support their government's Presidency (a standard practice), certain NRAs provided the ERG with a convenient channel of technical communication – a 'foot in the door' (NRA official) – through to the Council Presidency itself.

## Advocacy

The ERG, in its formal constellation as a network, portrayed itself throughout as a source of unbiased, technical advice, but was careful to avoid anything overtly political when approaching members of the EU institutions. According to one MEP, the ERG chair 'was very careful not to be seen to be lobbying for [the network].' They deemed it more effective to leave individual NRAs to lobby members of the institutions directly. A small group of larger and well-resourced NRAs, including the UK, German, French, Hungarian and Italian regulators, engaged in 'a lot of discussion' (Commission official) with the Commission, and one Commission official even went as far as saying that these NRAs 'wrote the BERC constitution together, in close collaboration with the Commission.' NRAs, individually or in groups, also reached into the Parliament, usually via relations with national MEPs and the rapporteurs who, according to one MEP, 'had discussions with NRAs throughout'. An NRA official told us that 'a number of the more politically well-connected regulators, operating in fairly close collaboration, would reach out to their own national MEPs and other MEPs that they would get to.' Parliamentary officials pointed to the French, Spanish, Italian, UK and German regulators as particularly active lobbyists.

Individual NRAs also reached into the Council via their parent ministries and permanent representations, especially as many NRAs were responsible for advising their government leads on the Council working party by providing 'information and help' (government representative in the working party). Having mobilised effectively, they usually first 'talked about [their position] as a group and then, in a bilateral

way, everybody tried to influence their own ministry to have the right approach' (NRA official). A ministry official (and member of the Council working party) also noted that, at the periphery of the formal meetings of the working party, NRA officials were 'quite active in talking to their other counterparts, and in deciding where we should go on a particular issue'. According to an industry representative, especially the larger and well-resourced NRAs were seen as 'very organized' in doing so, having for this purpose 'effectively employed lobbyists... who had public affairs background.' For instance, Ofcom (certainly in this bracket) saw 'risks associated' (NRA official) with the position of the UK government, which had expressed support for the proposed Commission veto over national remedies (Ofcom, 2008; UK House of Commons, 2009). Ofcom disassociated itself from this position and, unable to influence Council on the issue through its government lead, sought alternative channels, including contacts in the European Parliament and coalitions with other NRAs (thereby leveraging their influence over their government leads to reach Council indirectly).

## Brokering

Coalitions amongst small groups of NRAs became influential brokers as the negotiations ratcheted up in the first half of 2009. One NRA official told us that a small group of NRAs collaborated, at their own initiative, to draft counter proposals to fend off a Dutch initiative to table before Council a text that would have granted the Commission a veto, but which these NRAs considered impossible to implement and 'very convoluted and long.' The French regulator led a counter-drafting exercise that relied on its 'close relationship' with the French MEP and rapporteur, Catherine Trautmann, to 'fix' what it deemed an 'unacceptable' proposal (NRA official). According to an official in the European Parliament, these NRAs were 'very directly' involved in the drafting process in this way because 'they knew that with the text as it was in the proposal, they were not really able to properly use it.' NRAs may have also been

instrumental in fending off a last minute proposal by the Czech Council Presidency in favour of setting up a larger EU agency that it thought was a necessary compromise to win parliamentary approval for the Council's position to reject the Commission's proposed veto over national regulatory remedies. The Czechs received the support of a majority of member states that agreed that, 'tactically, to offer Parliament nothing would have come at the price of giving in on the veto' (ministry official); a price that some, particularly Germany and Spain, were fiercely opposed to paying. However, enough member states to constitute a blocking minority rejected this compromise for leaning too far towards agencification. NRAs told us that a small group of them stepped into this impasse and worked behind the scenes to formulate an alternative compromise that was closer to the original Council position that had rejected an EU agency. According to one NRA official: 'we spent the weekend amending [the Presidency's] version to turn it into our [sic] version again and then to have it tabled', producing 'something that everybody accepted'. They passed their text to their parent ministries and permanent representations to table before Council, and even took the precaution, at their own initiative, of forwarding it to the rapporteur to check it had parliamentary support. Although we could not verify the NRAs' account by means of external corroboration, it illustrates how, having worked so closely with all the principal players to the negotiations, they were potentially better placed than anyone to know where both Parliament and Council drew their red lines and were able to offer up a compromise that, to the surprise of each, secured the agreement of both, while simultaneously furthering the NRAs' own institutional preferences.

## Consolidation

BEREC continues to operate under pressure to legitimize the effectiveness of its working practices. Its members are sensitive to the continuing precariousness of their institution and the reality 'that if BEREC



does not deliver ... the debate on a more centralistic European regulatory authority may very well come back with a vengeance' (BEREC, 2011). The fact that its institutional architecture has so far proven resilient is apparently bolstered by NRAs' ongoing efforts to publicize its regulatory successes and to fine-tune its working practices so as to deliver efficiency, especially to address any 'undesirable bureaucratic burden' affecting the BEREC Office (BEREC, 2012, p.7). So, according to one NRA official, one reason for continuing the more informal IRG alongside BEREC is to make use of the IRG's Brussels office (the BEREC Office is based in Riga) and to avoid the 'disproportionate burden of EU rules and procedures' placed on BEREC. An evaluation report produced for the Commission and endorsed by Parliament (Pierre et al., 2012; European Parliament, 2013) attested to the overall effectiveness of BEREC, but noted room for improvement, especially in the BEREC Office. Again, BEREC proved an active institutional player, setting up its own internal project team to manage its input into this evaluation, while collaborating closely with the evaluation team. The next comprehensive review of the Regulatory Framework will test the resilience of BEREC's networked architecture once more because the Commission and Parliament are both proposing a strengthening of supranational resources to improve the effectiveness of its market-coordination (European Commission, 2015). At these initial stages, BEREC has responded by making clear that it considers further centralisation unnecessary and that the current institutional framework: 'balances consistency of regulatory approaches and regulators' ability to address the particularities of their national markets. While we should continue to aspire to greater harmonisation where it makes sense, fundamentally this balance should be retained.' (BEREC, 2015).

## Concluding remarks

The EU's use of transnational networks that softly discipline member states (whether the OMC or regulatory networks that oversee national discretion in the implementation of broad EU frameworks)

potentially marks a significant turn in European integration; more than just a transitional step towards centralisation (e.g. agencification) and formalisation (subjecting to law). We might better understand whether this is the case by considering processes of institutional change that bring about centralisation/formalisation. Whereas orthodox functionalist-political accounts attribute institutional change to negotiations between governments and the principal EU institutions over the (trans)formation of institutional-agents, which are then designed purely exogenously to fulfil particular coordination needs, we ask whether it might also be attributed, at least in part, to the institutional-agents whose power is at stake in those negotiations. We propose then a model of change that, in addition to functional-political mechanisms, accommodates a further endogenous layer, namely, the independent role that transnational networks play in shaping their own institutionalisation, which may make this mode of governance more resilient and even self-reinforcing.

We have tested the plausibility of this model with a case study in the telecoms sector that details the mechanisms and conditions under which transnational networks might succeed in bringing their influence to bear on institutional outcomes that affect their own governance structure. In our study, these conditions included: a network's tangible *resources*, as well as the intangible ones of its technocratic credentials, political profile, cohesiveness and autonomy; *selection* and *mobilisation* strategies, whereby members of the network internally agree on a collective institutional preference and put in place an infrastructure (e.g. working group) to maintain and externally disseminate it, thereby strengthening their strategic position vis-à-vis political principals. We further identified various forms of interactions with governments and the principal EU institutions during formal negotiations over institutional change - especially the ability to *frame agendas*, *advocacy* and *brokering* initiatives - as well as in the *consolidation* periods between negotiations, when the networks mode of governance is evaluated and informal changes are effected.

Though we clearly cannot generalize to an overall picture of European integration and institutional change from a single case study in a single sector, we might nevertheless tentatively suggest that, given the right conditions (only comparative studies will reveal how specific these were to our case study), existing transnational networks and their members are potentially powerfully positioned to act as institutional entrepreneurs that resist (slow or even prevent) processes of centralisation and formalisation. We ought then to open up the 'black box' of national and European administrative orders to consider not only the attitudes and interests of governments and the principal EU institutions, but also of 'arm's length' institutions and their transnational networks towards the scope of their and their networks' responsibilities. We suggest such an institutionalist approach, pointing towards the possibility of institutional path-dependency and self-reinforcing integration trends, is particularly suited to analysing the EU's maturing administrative order.

Designing further comparative research, to test whether this endogenous model of institutional change applies beyond the case study, will not be easy because our study also shows that institutional entrepreneurship operates as neither a single, linear process, nor as a sequence of separate causal events. It has a web-like character that combines distinct but mutually dependent processes that complement and feed into one another. Moreover, although the case study provides an example of institutional change in which the existing networks largely achieved their aims, the factors that contributed to this outcome reveal the precariousness of institutions propped up by their entrepreneurialism. Despite its skilful deployment, ERG/IRG came perilously close to failing to protect their mode of governance, which remains under considerable pressure, its survival dependent on BEREC continuing to persuade governments and the principal EU institutions of its value. The vulnerability to external events and circumstances beyond BEREC's control (e.g. changes to the wider political picture or

emerging policy concerns) again speaks to the need to blend, or layer, functionalist, political and institutional accounts when modelling European integration and institutional change in the context of transnational networks.

In developing this research agenda further, we might finally consider whether the resistance of transnational networks to centralisation (agencification) and formalisation (the hardening of the disciplining to which the network subjects its members, usually through the Commission) is born of self-preservation – simply to avoid being superseded by a more centralised body – or is instead attributable to their commitments, as an epistemic community, to an experimental mode of governance based on collegiality, peer-review, consensus-building and mutual learning (Haas, 1992; Sabel and Zeitlin, 2010). If these networks and the epistemic communities populating them form a symbiotic relationship that sustain and reinforce one another, excluding (or at least making more difficult) alternative architectures, they will be inclined to influence institutional change in their own image; to replicate their own decentralised/deformalized governance practices that they deem suited to EU governance more generally. NRAs in our study commonly described their involvement in the negotiations as an institutional ‘power struggle’ (NRA official) but clearly the fact that they were highly committed, as an epistemic community, to their networked ‘way of working’ (another NRA official), also played a role. Whether the latter is truly a factor that contributes to the resilience of a distinct, transnationally networked, soft disciplining mode of governance will again require careful comparative research.

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## Appendix

**TABLE 1: Interviewees' institutional affiliations**

Affiliation	Role	No. of interviews
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<b>European Commission</b>	D-G Information Society (senior management*)	2
	D-G Information Society (management)	1
	Commissioner cabinet	1
<b>European Parliament</b>	ITRE Committee	1
	MEP	1
	MEP office	1
<b>Council of Ministers</b>	Member of Council working party (ministry official)	5
	Member of Council working party (permanent rep)	2
	Council secretariat	1
<b>National regulatory authorities</b>	Senior management*	13 (total)
	• AGCOM (Italy)	2
	• ANACOM (Portugal)	1
	• BIPT (Belgium)	1
	• BNetzA (Germany)	1
	• ComReg (Ireland)	1
	• NMHH (Hungary)	1
	• Ofcom (UK)	3
	• OPTA (Netherlands)	1
	• PTS (Sweden)	1
	• RTR (Austria)	1
	Management	8 (total)
	• BNetzA (Germany)	1
	• Competition Authority (Estonia)	1
	• CMT (Spain)	1
	• CTU (Czech Republic)	1
	• Ofcom (UK)	2
	• HAKOM (Croatia)	1
	• ISTS (Denmark)	1

<b>BEREC Office (EU agency)</b>	Senior management*	1
<b>Industry representatives</b>	Senior management*	2
	Management	2
<b>Independent experts</b>	Academic (professor)	1
	Consultancy (senior management*)	2

\* Holding a leading management position, such as International Director or Head